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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 38.

FIDELITY & DEPOSIT COMPANY OF MARYLAND,
Petitioner,

vs.

LOUIS H. PINK, Superintendent of Insurance of the State of New York, as Liquidator of the Southern Surety Company of New York,
Respondent-Petitioner.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION OF RESPONDENT FOR REHEARING.

ALFRED C. BENNETT,
IRVIN WALDMAN,
Counsel for Respondent-Petitioner.

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Respondent-Petitioner.

PETITION OF RESPONDENT FOR REHEARING.

To the Honorable, the Supreme Court of the United States:

Pursuant to Rule 33 of the Rules of this Court, the respondent, Louis H. Pink, Superintendent of Insurance of the State of New York, as Liquidator of the Southern Surety Company of New York, does hereby petition this Honorable Court for a rehearing of the above-entitled cause, and in support thereof, respectfully shows:

This Honorable Court on December 6, 1937, reversed the judgment of the Circuit Court of Appeals, Second Circuit, which had unanimously affirmed a judgment of the United States District Court for the Southern District of New York.

In the written opinion of the Court, three reasons were assigned for such reversal, which reasons, with the utmost deference, it is respectfully submitted, were based on:

(1) An inadvertent misquotation of the language of the agreement sued upon, which caused error in the application of the law,

(2) a misapprehension of the pertinent portions of the Allemannia agreement relied upon to show the similarity of that agreement to the agreement sued upon, which likewise caused error in the application of the law, and

(3) a misapprehension of the facts, circumstances and conditions attendant upon the drawing of the agreement sued which led to a factual assumption which cannot be logically sustained.

Had this Honorable Court reversed the *Allemannia* case and declined to follow it, counsel for the respondent-petitioner, irrespective of their views as to the law, would have bowed in humble submission. It is respectfully submitted, however, that the express approval of the *Allemannia* case, in the opinion reversing the judgment in the instant case, presents an incongruity which cannot be reconciled and makes for an inexplicable enigma.

The decision of this Honorable Court, which cannot be altered, amended or recalled, save by the grace of this Court itself, deprives creditors of defunct insurance companies (including those whose policies have been reinsured) of millions of dollars, reverses a rule of law which has stood for centuries, throws the business of reinsurance into complete chaos, lengthens the course of liquidation of defunct insurance companies thereby increasing administration expense, and enriches reinsurers who are relieved from the payment of their obligations and permitted to retain the consideration for engagements which they need not now carry out.

If this petition is longer than it should be, the indulgence of this Honorable Court is sought, because of the importance of the question involved to the creditors of the defunct companies who suffer so greatly thereby, state insurance authorities who must now formulate new rules, the insurance companies which must now readjust their business, and to the insurance world in general.

First Specification of Error.

This Honorable Court, by reason of an inadvertent misquotation of the reinsurance agreement sued upon, erred in its application of the law. The opinion states:

> "The 1930 form provides 'the reinsurer does hereby reinsure against loss'. The *Allemannia* policy declared the company 'hereby agrees to reinsure'."

It is respectfully submitted that the 1930 form does not so provide; and that the quotation from the *Allemannia* policy is tantamount to excluding the word "not" from the quotation "I do not".

The 1930 form is similar to and almost identical with the language of reinsurance agreements which were construed as indemnity against liability and not as against loss **and were approved as such by this Court.**

In *Allemannia Fire Ins. Co.* v. *Firemen's Ins. Co.*, 209 U. S. 326, this Honorable Court cited with approval *Hone* v. *Mutual Safety Ins. Co.*, 2 N. Y. 235, wherein the Court of Appeals, *in the opinion*, quoted the language of the reinsurance agreement as follows (p. 243):

> "The words of the contract in this case are, 'The Mutual Safety Insurance Company, by this policy of insurance, in consideration of thirty-five dollars to them paid by the insured hereinafter named, the receipt whereof is hereby acknowledged, **do reinsure The American Mutual Insurance Company against loss** or damage by fire, to the amount of

> ten thousand dollars, on merchandise, hazardous or not hazardous, property of Hackenrath & Van Damme * * *", &c. (Emphasis ours.)

Another case cited by this Honorable Court with approval in the *Allemannia* case was *Consolidated Real Estate and Fire Ins. Co.* v. *Cashow*, 41 Md. 59, wherein the reinsurance agreement read:

> "Northwestern National Insurance Company of Milwaukee, Wisc., by this policy of insurance, in consideration of seventy dollars to them paid by the assured hereinafter named, the receipt whereof is hereby acknowledged, **do reinsure Fulton Fire Insurance Company, of New York, against loss** or damage by fire to the amount of five thousand dollars, on their insured interest under their policy No. 8212, issued to Simpson, Nowel & Co., on their stock of merchandise", &c. (Emphasis ours.)

Other cases relied upon by this Honorable Court in the *Allemannia* opinion contain similar language.

It is respectfully submitted that the words "against loss", in the cited cases placed thus *immediately after the name of the reinsured company,* would far more readily have justified a construction of indemnity against loss than the case at bar, where the words "against loss" follow not the name of the reinsured company, but the policy or bond which the reinsurance affects.

If it be urged that the words "against loss" in the cited cases are accompanied and followed by the words "or damage" and that they are therefore distinguishable, the contention is specious; for fire (the risk reinsured in those cases were fire losses or damage) may cause a total loss or partial loss or merely damage, whereas a fidelity bond envisages embezzlement as to which there can be loss only. Hence the language in the instant case is "against loss" and not "against loss or damage".

The 1930 form is less susceptible to a construction of indemnity against loss than is the Allemannia contract or the contracts in the cases therein cited with approval.

The 1930 form provides not that "the reinsurer does hereby reinsure against loss", but that "the REINSURER, does hereby reinsure FIDELITY AND DEPOSIT COMPANY OF MARYLAND, hereinafter called the REINSURED, under bond numbered....., together with all riders attached thereto, hereinafter called the BOND, issued by the Reinsured in the penalty of.....Dollars in favor of .....(obligee), and in behalf of ..... hereinafter called the Principal, against loss thereunder and against costs and expenses, as hereinafter defined, and interest. A copy of the bond is or may be attached hereto, and is hereby made a part of this agreement" (R. 47, lines 2-10).

It will be observed that in the citations in the *Allemannia* case, the words "against loss" follow the name of the reinsured company, whereas, in the case at bar, the words "against loss" follow not the name of the reinsured company, but a description of the risk reinsured. It is respectfully submitted, that if the agreements in those cases so cited with approval by this Court, were held to be agreements for indemnity against liability and not against loss, the reason for so construing the agreement in the case at bar becomes overwhelming and the contrary ruling can only be ascribed to the misreading of the agreement sued upon.

Again, this Honorable Court, it is respectfully submitted, misread or overlooked vital language of the Allemannia agreement which gave infinitely more cause for construction of indemnity against loss than the instant agreement. In that case, the agreement did not merely "hereby agree to reinsure" but to reinsure **upon certain terms and conditions.** It read as follows:

> "* * * hereby agrees to reinsure the Firemen's Insurance Company of Baltimore, Maryland, under its policies * * * in such amounts, * * * as shall be entered in the book * * * **subject to and governed by the following terms, Conditions and Stipulations:"** (Emphasis ours.) (Appendix, p. 21, Petitioner's Brief.)

Just what were those "following terms, conditions and stipulations"? They are found, among others, under the heading **"Loss and Loss Expenses"** in subdivision 11 of the *Allemannia* contract as follows:

> "* * * losses, if any, shall be payable pro rata with, in the same manner, and upon the same terms and conditions **as paid by the said reinsured company** under its contracts hereunder reinsured, **and in no event shall this company be liable for an amount in excess of a ratable proportion of the sum actually paid** to the assured * * * by the said reinsured company * * *." (Emphasis ours.) (Appendix, p. 25, Petitioner's Brief.)

The loss or damage referred to in the reinsurance agreement is the injury to the original property insured or the loss which the primitive assured suffers. It is not and never has been construed to be the loss of the reinsured (Brief, pp. 6-16). (*Provincial Insurance Company* v. *Aetna Insurance Company*, 16 Upper Canada, Q. B. 135.)

Second Specification of Error.

In the opinion, this Honorable Court, quoting that part of the 1930 form wherein appears the language that the reinsurer's proportionate share of the loss shall be paid to the reinsured upon proof of payment, stated that the Allemannia policy contained no equivalent terms and illustrated the point by quoting a provision of the Allemannia contract **which was never claimed to be the equivalent of the language of the standard form and was not relied upon by either of the Courts below or by the respondent.** This Honorable Court, it is respectfully submitted, overlooked the language **which was relied upon** and which furnishes an unequivocal and most compelling equivalent to the language of the 1930 standard form.

Such language appears not in subdivision 10 of the Allemannia contract, (which was quoted by this Honorable Court), but in subdivision 11 under the heading **"Losses and Loss Expenses"** and reads:

> "Each entry under this compact * * * shall be subject to the same conditions * * * as may be assumed by the said reinsured company under its original contracts hereunder reinsured, and losses, if any, shall be payable pro rata with, in the same manner, and upon the same terms and conditions as paid by the said reinsured company under its contracts hereunder reinsured, **and in no event shall this company be liable for an amount in excess of a ratable proportion of the sum actually paid to the assured * * * by the said reinsured company under its original contracts hereunder reinsured** * * *." (Emphasis ours.) (Appendix, p. 25, Petitioner's Brief.)

This is the language upon which respondent-petitioner relied as equivalent; and this Honorable Court in the *Allemannia* case interpreted that clause (p. 336):

> "We agree with the court below, that the language of the eleventh subdivision, taken in connection with the fact that it is used in a contract designated by the parties as one of reinsurance, means that the reinsuring company shall not pay more than its ratable proportion of the **actual liability payable** on the part of the reinsured, after deducting all liability of other reinsurers." (Emphasis ours.)

The contract in the instant case was "designated by the parties as one of reinsurance" and the language which follows, (quoted by this Court in the opinion), means **not payment** but the "actual liability payable". Subdivision 10 of the Allemannia contract, quoted in the opinion in the case at bar, was dismissed by this Honorable Court in the *Allemannia* case with the comment (p. 336):

> "Subdivision 10 of the contract does not result in any different conclusion."

In other words, the subdivision stressed in the instant case by this Honorable Court was brushed aside by this Court as of no consequence in the *Allemannia* case, whereas the subdivision relied upon by respondent-petitioner, and which cannot be distinguished from the clause in the instant case, was apparently overlooked.

Third Specification of Error.

The last reason given by this Honorable Court for a reversal was set forth as follows:

> "As the standard form of 1930 was adopted twenty years after the *Allemannia* case it fairly may be assumed that the dissimilar language employed was intended to impose liability different from the one there found to exist."

Previously in the opinion, the Court said:

> "* * * the liability under any written contract must be determined upon consideration of the words employed, read in the light of attending circumstances."

The latter rule of law cannot be disputed. It is respectfully submitted that this Honorable Court overlooked or misapprehended salient facts and circumstances and that "the light of attending circumstances" demonstrates conclusively that the agreement was intended to be one of indemnity against liability and not against loss.

The authorities cited by the respondent in the brief heretofore submitted, disclose that the words "payment", "paid", "payable", "actually paid", "reinsure" and similar language used in connection with reinsurance contracts are and always have been regarded in the insurance world not as a requirement for actual payment, **but as liability for payment.**

The standard form was adopted not in 1930, "twenty years after the Allemannia case", **but in 1915,** seven years

after the *Allemannia* case; **for the language of the 1930 agreement, relied upon by this Court in the construction thereof, is precisely the same as that used in the standard form of 1915** (R. 47, 49; Brief, pp. 18, 19), which was squarely construed by the Supreme Court of Iowa in 1923 as indemnity against liability *not as dictum*, but as the law of the case. *Globe National Fire Insurance Co.* v. *American Bonding and Cas. Co.*, 198 Iowa 1072.

And in the face of this decision, such standard form was redrawn seven years later with the selfsame language which the Iowa Court had ruled constituted an agreement of indemnity against liability and not against loss.

These then are the "attending circumstances". Summarized, they are: a well settled rule of law, the use of language always construed as indemnity against liability in reinsurance, the decision of the highest Court of a state construing the precise language as indemnity against liability, and the decision of this Honorable Court interpreting language more susceptible to the construction contended for by the reinsurer, as indemnity against liability.

The interpretation sought by respondent-petitioner is fortified even further by the use of language in the 1930 standard form which would be utterly absurd if the agreement were not one of indemnity against liability. Such verbiage would have no place in the agreement unless it *was* one of indemnity against liability and not loss (R. 47, lines 136-151, 62-65; Brief, p. 23).

It is respectfully submitted that such facts and circumstances warrant the assumption, not that the draftsmen of the 1930 standard form intended to deviate from the universal rule as reiterated in the *Allemannia* case, but that they intended to follow that well settled rule which had been reiterated in every reported case, text, authority and article. If, as contended by the reinsurer in its brief, there was no warrant for an assumption that the draftsmen knew of the Iowa case or the *Allemannia* case, it is earnestly submitted that there is

definitely less warrant for the assumption that with knowledge of the *Allemannia* case, they used dissimilar language with an intent to deviate from the rule of law therein reiterated, although that dissimilar language cannot be distinguished from the *Allemannia* language and was the precise language construed by the Supreme Court of Iowa as indemnity against liability.

An intention to depart from a well settled rule of law must be based not upon an assumption but upon an express stipulation. In *Consolidated Real Estate and Fire Insurance Company* v. *Cashow*, 41 Md. 59, approved by this Honorable Court in the *Allemannia* case, the Court, after referring to the nature of a reinsurance contract as being one of indemnity against liability and not loss, said (p. 75):

> "This being the unquestioned law of such contracts generally, the question is, have the parties modified it by any *express stipulation* of the policy in suit?" (Italics ours.)

And in a reinsurance contract which provided among other things that the liability of the reinsurer was limited to actual compensation to employees, the Court, in *Republic Metal Ware Co.* v. *General Reinsurance Corp.*, 245 A. D. 232 (N. Y.), after enunciating the law of reinsurance as being one of indemnity against liability and not against loss, said (p. 237):

> "To permit a construction of such a contract, so as to confine its obligations to an indemnity for obligations discharged by payment, *such must clearly and unequivocally appear to have been intended upon the terms of the instrument of reinsurance itself.*" (Italics ours.)

Neither an express stipulation nor unequivocal terms tending to permit of any construction other than indemnity for liability appear in the 1930 form or 1915 form.

It is fair to ask what was intended to be accomplished by the 1930 standard form.

> "Commercial agreements must be interpreted in the light of commercial usages, of reason and of justice. It must be presumed that the intention of the parties to them, regarding their performance as well as their terms, is reasonable, fair and practicable."
>
> *Kauffman* v. *Raeder*, 108 Fed. 171, 185-186 (C. C. A. 8th Circuit, Mo.).

"*In the light of commercial usages*", the agreement in the case at bar must be interpreted as one of indemnity against liability. That has always been and still is the accepted practice and usage, not only in intercompany transactions, but uniformly in various state insurance department examinations, where reinsurance is admitted as a credit to nullify liability on a primitive risk and erase required reserves.

"*In the light of reason*", it must also be so interpreted, in that the reinsured company by reinsuring its risks was endeavoring to protect policyholders and forestall insolvency which might ensue by it being compelled to maintain reserves for the entire unearned premiums and pay full losses, or a temporary insolvency which might ensue between payment of a loss by it and collection of reinsurance.

"*In the light of justice*", it must also be so read, in that the consideration which the reinsurer received was in no way effected by the misfortune of the reinsurer, the reinsurer suffered no prejudice thereby and was, moreover, permitted to retain moneys paid to it out of premiums received by the reinsured which constitute a trust fund for the payment of losses of policyholders (*Scoville* v. *Thayer*, 105 U. S. 143; *Mygatt* v. *N. Y. Protection Insurance Co.*, 21 N. Y. 52, 59). The use of the premiums for

such a purpose has been approved only because it gives a greater security for that purpose.

That is the "reasonable, fair and practicable" construction of the 1930 reinsurance agreement and the intention of the parties, in the light of commercial usage, reason and justice, which in the light of attending circumstances "must prevail over the dry words of the stipulation". (*Kauffman* v. *Raeder*, 108 Fed. 171, 175.)

The "honorable engagement rather than as a mere legal obligation", which expressly characterizes the 1930 form (R. 47, lines 185-187), is made a hollow mockery, if reinsurers may take advantage of the misfortune of the reinsured, which injures such reinsurer not one whit, and deprive creditors of the reinsured of the fruits of the reinsurance contract entered into for their benefit and at their expense, whilst the reinsurer retains the consideration therefor.

Conclusion.

The staggering blow which this decision has dealt the reinsurance business, the subversion of the rule of law inherent in reinsurance contracts as it has obtained through the centuries, the millions of dollars of which the creditors of defunct companies are being deprived, the unjust enrichment of reinsurers, together with all other reasons hereinbefore set forth, make out, it is submitted, a strong case for a reconsideration. Surely before such a rule of law, which has stood for centuries and has been the beacon of the reinsurance business, is overruled and reversed, and millions of dollars taken thereby from creditors whose security in premium reserves was depleted by exchanging the same for a greater security in the way of a reinsurance contract, consideration should be given of the issues in this case and if, perchance, this Honorable Court feels further proof is necessary with respect to any matter in issue in the lower

Court, it may be so ordered, to the end that justice may not be thwarted.

WHEREFORE on all the foregoing grounds, it is respectfully urged that this petition for a rehearing be granted and that the judgment of the lower Courts be, upon further consideration, affirmed.

Respectfully submitted,

ALFRED C. BENNETT,
IRVIN WALDMAN,
Counsel for Respondent-Petitioner.

Certificate of Counsel.

I, IRVIN WALDMAN, counsel for the above-named respondent-petitioner, Louis H. Pink, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

Dated, December 15, 1937.

IRVIN WALDMAN,
Counsel for Respondent-Petitioner.

SUPREME COURT OF THE UNITED STATES.

No. 38.—October Term, 1937.

Fidelity & Deposit Company of Maryland, Petitioner, *vs.* Louis H. Pink, Superintendent of Insurance of the State of New York, etc.	Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[December 6, 1937.]

Mr. Justice McReynolds delivered the opinion of the Court.

In 1930 Southern Surety Company, a New York corporation, issued to John DeMartini Co., Inc., a fidelity insurance bond and on the same day reinsured half of the risk with petitioner, Fidelity & Deposit Company of Maryland. The DeMartini Co. claimed a loss. While this was in course of adjustment (March, 1932), a New York court adjudged the Southern Company insolvent and dissolved it. Respondent Pink, Superintendent of Insurance for New York, took possession of its property and entered upon liquidation of the business.

He allowed but did not discharge the DeMartini Company's claim. Thereupon he demanded that petitioner pay half of it. This having been refused he instituted these proceedings in the United States District Court to recover upon the reinsurance contract. Judgment went in his favor; the Circuit Court of Appeals affirmed; the matter is here upon certiorari. The facts are not in dispute.

The contract between the two insurance companies incorporated the "standard form of reinsurance agreement" adopted by the Surety Association of America in 1930. This form provides —

"In consideration of the premium payable under section 1 hereof ..... hereinafter called the Reinsurer, does hereby reinsure Fidelity & Deposit Company of Maryland, hereinafter called the Reinsured, under bond numbered ....., together with all riders attached thereto, hereinafter called the Bond, issued by the Reinsured in the penalty of ..... Dollars, in favor of ..... (obligee), and in behalf of ..... hereinafter called the Principal, against loss thereunder and against

costs and expenses, as hereinafter defined, and interest. A copy of the bond is or may be attached hereto, and is hereby made a part of this agreement.

"The foregoing agreement is subject to the following conditions and provisions:". (These appear in fifteen succeeding sections.)

Section 4, copied in the margin,[1] contains the following, among other things—

"The Reinsurer's proportionate share of a loss under the bond, of costs and expenses as hereinafter defined, and of interest, shall be paid to the Reinsured upon proof of the payment of such items by the Reinsured, and upon delivery to the Reinsurer of copies of all essential documents concerned with such loss and costs and the payment thereof. The Reinsured may, however, give the Reinsurer written notice of its intention to pay the loss on a certain date, and may require the Reinsurer to have its share of such loss in the hands of the Reinsured by such date: provided, however, that the Reinsurer in any event shall have a period of forty-eight hours, after the receipt of such written notice from the Reinsured, to mail or otherwise despatch its payment; and provided further that in any such case the Reinsurer, if it desires to do so, may pay its share of the loss by means of a check drawn in favor of the obligee of the bond."

Petitioner's counsel maintain that the standard form provides for insurance only "against loss"; that the reinsurer thereunder becomes liable only upon "proof of the payment of such items by the Reinsured, and upon delivery to the Reinsurer of copies of all essential documents concerned with such loss and costs and the payment thereof"; that payment by the reinsured is a condition precedent to the reinsurer's liability. Sundry provisions in the form, indicated below, they say lend support to this view.[1]

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[1] Introduction—"Does hereby reinsure . . . . against loss".
Section 3—

"3. Unless otherwise expressly agreed, the amount of liability retained by the Reinsured at its own risk both when this agreement is made and at the time of any breach of the bond resulting in a claim thereunder shall be:

"(a) If the bond be other than a depository bond or blanket bond, in no event less than the amount ceded hereunder, such retention to be carried under the bond; or

"(b) If the bond be a depository bond, in no event less than the amount ceded hereunder plus the amount of all reinsurance ceded by the Reinsured to the Reinsurer under any other depository bond or bonds issued by the Reinsurer in behalf of the Principal and effective at the time of any breach of the bond resulting in a claim thereunder, such retention to be carried under any depository bond or bonds issued and/or any depository reinsurance or reinsurances carried by the Reinsured in behalf of the Principal; or

"(c) If the bond be a blanket bond, in no event less than the amount ceded hereunder plus the amount of all reinsurance ceded by the Reinsured to

Respondent maintains that proof of payment is not a prerequisite to recovery.

Both courts below thought that *Allemannia Insurance Company* v. *Fireman's Insurance Company*, 209 U. S. 326 (1908), required approval of respondent's contention. This was error. The defense was well taken and should have been sustained.

We do not question the general rules concerning liability of reinsurers announced in the *Allemannia* case; but the liability under any written contract must be determined upon consideration of the words employed, read in the light of attending circumstances.

Here the two insurance companies stood upon an equal footing; both were experts in the field. The language used differs materially from that found in the policy of the Allemannia Company. There is no ambiguity and no circumstance requires disregard of the ordinary meaning of the language.

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the Reinsurer under any other blanket bond or bonds issued by the Reinsured in favor of the same insured and effective at the time of any breach of the bond resulting in a claim thereunder; such retention to be carried under any blanket bond or bonds issued and/or any blanket bond reinsurance or reinsurances carried by the Reinsured in favor of the same insured. The actual retained liability of the Reinsured as aforesaid shall not be more than that ceded to the Reinsurer, whether it be primary or excess or partly primary and partly excess. . . ."

Section 4—

"The Reinsurer's proportionate share of a loss under the bond, of costs and expenses as hereinafter defined, and of interest, shall be paid to the Reinsured upon proof of the payment of such items by the Reinsured, and upon delivery to the Reinsurer of copies of all essential documents concerned with such loss and costs and the payment thereof. The Reinsured may, however, give the Reinsurer written notice of its intention to pay the loss on a certain date, and may require the Reinsurer to have its share of such loss in the hands of the Reinsured by such date: provided, however, that the Reinsurer in any event shall have a period of forty-eight hours, after the receipt of such written notice from the Reinsured, to mail or otherwise despatch its payment; and provided further that in any such case the Reinsurer, if it desires to do so, may pay its share of the loss by means of a check drawn in favor of the obligee of the bond.

"The Reinsurer may inspect the original documents relating to claims and losses under the bond in the possession of the Reinsured.

"The term costs and expenses shall mean all expenditures made in investigating and settling any claim under the bond; all expenditures made in procuring or attempting to procure restitution or recovery on account of any loss, costs, or expenses; and all expenditures made in prosecuting or attempting to prosecute any person causing a loss under the bond."

Section 10—

"The Reinsurer shall be entitled to share with the Reinsured, in the proportion defined in section 2 hereof, any collateral security or indemnity held by the Reinsured. . . ."

The 1930 form provides, "The Reinsurer does hereby reinsure against loss." The Allemannia policy declared the company "hereby agrees to reinsure."

Petitioner's policy says—"The reinsurer's proportionate share of the loss . . . shall be paid to the reinsured upon proof of the payment of such items by the reinsured and upon the delivery to the reinsurer of copies of all essential documents concerned with such loss and the payment thereof." The Allemannia policy contained no equivalent terms. It provided—"Upon receiving notice of any loss or claim under any contract hereunder reinsured, the said reinsured company shall promptly advise the said Allemannia Fire Insurance Company, at Pittsburg, Pennsylvania, of the same, and of the date and probable amount of loss or damage, and after said reinsured company shall have adjusted, accepted proofs of, or paid such loss or damage, it shall forward to the said Allemannia Fire Insurance Company, at Pittsburg, Pennsylvania, a proof of its loss and claim against this company upon blanks furnished for that purpose by said Firemen's Insurance Company, together with a copy of the original proofs and claim under its contract reinsured, and a copy of the original receipt taken upon the payment of such loss; . . . ."

As the standard form of 1930 was adopted twenty years after the *Allemannia* case it fairly may be assumed that the dissimilar language employed was intended to impose liability different from the one there found to exist.

The judgment below must be reversed. The cause will be remanded for further proceedings.

Reversed.

The CHIEF Justice took no part in the consideration or decision of this cause.

A true copy.

Test:

Clerk, Supreme Court, U. S.